IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.79 OF 2006
IN
SUIT NO.3441 OF 2005

Alsabah Shahenshah Nawab & Anr. .. Plaintiffs.

V/s.

Nafisa Jameel Ahmed .. Defendant.

Mr.Manoj Dalvi i/by Banatwala & Co. for the plaintiffs.

Mr.Kunal Bhange i/by Mr.Vasant Bhange for the defendant.

CORAM : J.P. DEVADHAR, J.

DATED : 17TH AUGUST, 2006.

P.C. :

1. Although several reliefs are claimed by the plaintiffs in this notice of motion, the learned counsel for the plaintiffs has restricted his claim only in respect of repairs to the terrace in possession of defendant No.1.

2. The flat of defendant No.1 together with terrace is situate just above the flat belonging to the plaintiffs. The plaintiffs had complained to the Municipal Authority regarding the damage caused to her flat on account of leakage from the terrace flat which is in possession of the defendant No.1. Accordingly, the officials from the Municipal Corporation had inspected the premises of the defendant No.1 on February 17, 2005. In the letter addressed by the Assistant

Engineer on March 4, 2005, it is recorded that the defendant No.1 had agreed to carry out necessary repairs to the terrace.

3. It is the contention of the defendant No.1 that the entire building is in dilapidated condition as the building is not maintained properly. According to the defendant, the builders have not conveyed the building to the society and hence no one is maintaining the building. It is submitted that the defendant No.1 had not agreed to carry out any repairs to the terrace. In the absence any particulars regarding the leakage, it is submitted that the defendant No.1 cannot be directed to carry out repairs.

4. In my opinion the photographs annexed to the suit as well as the letter addressed by the Assistant Engineer on March 4, 2005 clearly show that the terrace in possession is leaking as a result whereof the flat of the plaintiffs is being damaged. The fact that the plaintiffs are staying abroad cannot be a ground for the defendant No.1 to decline to carry out necessary repairs to the terrace in their possession.

5. In this view of the matter, I am of the opinion that the defendant No.1 is bound and liable to carry out necessary repairs to the terrace in their possession attached to their flat No.301, 3rd floor, Sheeba

Apartments, Kabir Nagar, Sahar Road, Andheri (East), Mumbai 400 099.

6. In this view of the matter, the notice of motion is made absolute in terms of prayer clause (c). The defendant No.1 is directed to carry out necessary repairs to the terrace within four weeks from today.

7. The notice of motion stands disposed of in terms of this order.

(J.P. DEVADHAR, J.)